IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 762 of 2005.

Reserved on: 26.10.2007.

Decided on: 30.10.2007.

Rajinder Kumar.	**…**	**…**	**Petitioner.**
Versus			
Presiding Officer, Labour Court & Ors.	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner: **Mr. Neeraj K. Sharma, Advocate.**

For Respondents No.2 & 3: **Mr. Lovneesh Kanwar, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala, dated 1.4.2005 in reference No.255/2001.

The brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:-

> **"Whether the termination of the services of Sh. Rajinder Kumar, s/o Sh. Shesh Ram, VPO-Thara, Tehsil Baijnath, Distt. Kangra, H.P. w.e.f.6.12.1999 without conducting the enquiry by the Management of Khadi Gramoudhog Sansthan, head Office, Nagrota Bagwan, Distt. Kangra, H.P. is legal and**

Whether reporters of local papers may be allowed to see the judgment? NO.

justified. If no, what service benefits the above workman is entitled to?"

In sequel to the reference made by the State Government, the petitioner had filed his statement of claim before the Labour Court. The Management, i.e. respondents No.2 and 3 had also filed their replies to the statement of claim filed by the petitioner. The petitioner had filed the rejoinder to the replies filed by the Management. The Labour Court on the basis of the evidence led by the parties had answered the reference in negative on 1.4.2005.

Mr. Neeraj K. Sharma had strenuously argued that the award dated 1.4.2005 is not sustainable in the eyes of law. Mr. Lovneesh Kanwar appearing on behalf of respondents No.2 and 3 had supported the award dated 1.4.2005.

I have heard the learned counsel for the parties and also perused the record carefully.

The petitioner (hereinafter referred to as the workman for convenient sake) was engaged by the respondents-Management on 2.10.1991 as a salesman and was posted at Nagrota Bagwan. His services were terminated with effect from 6.12.1999 vide communication dated 6.11.1999. The reference which has been made by the State Government to the Labour Court-cum-Industrial Tribunal, Dharamshala was specifically to the effect "whether the termination of the services of the petitioner with effect from 6.12.1999 without conducting inquiry by the Management of the Khadi Gramoudhog Sansthan, head Office, Nagrota Bagwan, Distt. Kangra, H.P. was legal and justified?"

Mr. Lovneesh Kanwar, Advocate appearing on behalf of the Management had drawn the attention of the Court to the documents which were placed before the Labour Court to buttress his submission that a regular inquiry was held against the workman on the basis of

which his services have been terminated. The Inquiry Officer had sent the communication to the workman on 27.11.1998 conveying the charges levelled against him and the date of conducting the inquiry on 11.12.1998. The second communication was sent by the Inquiry Officer to the petitioner requesting him to make himself available for inquiry on 27.12.1998 (sic 27.11.1998). The next communication was addressed by the Inquiry Officer to the workman to make himself available before him on 11.1.1999. The petitioner-workman had not chosen to associate himself during the course of the inquiry which led to the ex-parte enquiry being held against him. The Inquiry Officer prepared the report on 1.2.1999 and the charges levelled against the workman were held proved.

In sequel to the inquiry report, a communication was sent to the petitioner on 30.10.1999 seeking his reply. Thereafter the petitioner was served with one month's notice on 6.11.1999 informing him that his services will be terminated from 6.12.1999.

The workman had appeared as PW-1 before the Labour Court. He had admitted in his cross-examination that he was aware of the inquiry initiated against him. RW-2 Shri Suresh Kumar had stated before the Labour Court that he had also informed the workman to appear before the Inquiry Officer. The Inquiry Officer had himself appeared as RW-3 before the Labour Court. He had testified before the Labour Court that he had summoned the workman through registered AD letter, but the workman did not associate himself during the course of inquiry. In view of the statement of the petitioner as PW-1 and that of RW-2 and RW-3, it can safely be presumed that the workman was aware of the inquiry pending against him and despite that he had not participated in the same. The Inquiry Officer as per inquiry report, i.e. Ex. R-40(B) had held that the charges levelled against the workman stood proved. The

services of the workman thereafter have been terminated serving one month's notice with effect from 6.12.1999. The inquiry was instituted against the petitioner for the embezzlement of the Management money by the workman. The proposed penalty had been communicated to the workman vide Ex.P-40. In view of this it was not necessary for issuing any notice under Section 25-F of the Industrial Disputes Act, 1947 or payment of retrenchment compensation. The workman had also admitted the contents of letter Ex.D-1 whereby he had agreed to pay the embezzled amount in instalments on 22.5.1998. He had admitted his signatures on Ex.D-1. He had reiterated his prayer to deposit the amount vide Ex.D-2. In view of this clear admission by the workman himself also the award is liable to be up-held.

So far as the finding recorded by the Labour Court with regard to non-joinder of parties is concerned, the same was curable and the time could be granted to the workman to implead the Management instead of Secretary of the Sansthan. I have also gone through the entire record of the Labour Court. There is neither any jurisdictional error nor any procedural impropriety or illegality in the award dated 1.4.2005. The Labour Court had appreciated the documents and the oral evidence led by the parties.

Consequently, the writ petition is dismissed and the award dated 1.4.2005 is up-held. There shall be no order as to costs.

October 30, 2007. **(Rajiv Sharma), Judge.**
(sck)